

EXHIBIT S

Volume 6

Pages 1133 - 1396

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

ORACLE AMERICA, INC.,)	
)	
Plaintiff,)	
)	
VS.)	No. C 10-3561 WHA
)	
GOOGLE, INC.,)	
)	
Defendant.)	San Francisco, California
)	April 23, 2012

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

APPEARANCES:

For Plaintiff:

MORRISON & FOERSTER
755 Page Mill Road
Palo Alto, California 94304

BY: MICHAEL A. JACOBS, ESQUIRE
KENNETH A. KUWAYTI, ESQUIRE
MARC DAVID PETERS, ESQUIRE
DANIEL P. MUINO, ESQUIRE

BOIES, SCHILLER & FLEXNER
333 Main Street
Armonk, New York 10504

BY: DAVID BOIES, ESQUIRE
ALANNA RUTHERFORD, ESQUIRE

(Appearances continued on next page)

Reported By: Katherine Powell Sullivan, RPR, CRR, CSR #5812
Debra L. Pas, RMR, CRR, CSR #11916
Official Reporters - U.S. District Court

Katherine Powell Sullivan, CSR, CRR, RPR
Debra L. Pas, CSR, CRR, RMR
Official Reporters - US District Court - 415-794-6659

APPEARANCES (CONTINUED) :**For Plaintiff:**

BOIES, SCHILLER & FLEXNER
 1999 Harrison Street, Suite 900
 Oakland, California 94612

**BY: WILLIAM FRED NORTON, ESQUIRE
 STEVEN C. HOLTZMAN, ESQUIRE**

ORACLE AMERICA, INC.
 500 Oracle Parkway
 Redwood Shores, California 94065

**BY: ANDREW C. TEMKIN, CORPORATE COUNSEL
 DORIAN DALEY, GENERAL COUNSEL**

For Defendant:

KEKER & VAN NEST
 633 Battery Street
 San Francisco, California 94111-1809

**BY: ROBERT ADDY VAN NEST, ESQUIRE
 CHRISTA MARTINE ANDERSON, ESQUIRE
 DANIEL PURCELL, ESQUIRE
 MICHAEL S. KWUN, ESQUIRE**

KING & SPALDING LLP
 1185 Avenue of the Americas
 New York, New York 10036-4003

BY: BRUCE W. BABER, ESQUIRE

GOOGLE, INC.
 1600 Amphitheatre Parkway
 Mountain View, California 94043

BY: RENNY HWANG, LITIGATION COUNSEL

For Dr. Kearl:

FARELLA BRAUN & MARTEL LLP
 235 Montgomery Street, 30th floor
 San Francisco, California 94104

BY: JOHN L. COOPER, ESQUIRE

Also Present:

SAFRA CATZ, President and CFO
 Oracle Corporate Representative

CATHERINE LACAVERA
 Google Corporate Representative

— — —

PROCEEDINGS

1366

1 kind of -- well, I'm saying 25 percent should hold everything.

2 If you want to hold back your consent on 25 percent,
3 that would be entirely reasonable. So if they give you 40, you
4 hold back on ten. If they give you a hundred, you hold back on
5 25.

6 **MR. VAN NEST:** The reason I used handful, Your Honor,
7 is it's a little bit easier to see what a handful is. If you
8 say 25 percent and I get a list of 200 exhibits tonight, I
9 can't wait, that's probably going to be it --

10 **THE COURT:** Well, that would be unreasonable. In
11 fact, 40 is a lot. I would not have asked the other side to
12 stipulate to 40. I'm thinking 12, maybe two dozen. For
13 documents in that range, numbers in that range is manageable.

14 But 40, I think you're giving a big homework
15 assignment to the other side. When they're trying to do their
16 cross-examination, I think that's a lot. I wouldn't have asked
17 for 40.

18 **MR. BOIES:** But I'm greedy, Your Honor.

19 **THE COURT:** I can't say never. I can just say it
20 seems like a lot.

21 **MR. BOIES:** It does, but this is a very important
22 witness, Your Honor.

23 **THE COURT:** Of course. You could have asked before
24 last night.

25 **MR. BOIES:** Well, actually, all these documents were

PROCEEDINGS

1367

1 in what we gave them on Saturday. And we'll go over them again
2 and see what we've got.

3 **THE COURT:** All right. You all work on that.

4 I've got some questions for you though. Can I change
5 the subject?

6 **MR. VAN NEST:** Sure.

7 **THE COURT:** Let me just give you the numbers. 686
8 and 437 are how I calculate the time so far. And I think under
9 the hour each side gets 1,020.

10 Is there -- on the willfulness issue, is there going
11 to be a defense of advice of counsel?

12 **MR. VAN NEST:** No, Your Honor.

13 **THE COURT:** Well, I have this question then. I'm
14 working up a verdict form. And do you want -- I told you
15 earlier we would save willfulness until the end. That's
16 usually just because of the defense advice of counsel.

17 So if both sides were to agree to advance the issues
18 of willfulness to this phase, we could have the jury -- you
19 don't have to answer that now. I want you to think about it,
20 because it's on my mind.

21 And, you know, we can stick with the way we had it, I
22 guess, but if there's not going to be advice of counsel, then
23 the jury is hearing all these documents about we need a license
24 and so forth, it does go to willfulness.

25 So if the jury finds that you did something wrong,

1 you know, this might be a logical time to figure out if it was
2 willful or not. So I'll let you consider that point.

3 I have a different question, and that is this -- this
4 is to Oracle. Here's something I have a hard time following,
5 and that is your argument about -- what's the phrase? --
6 derived work?

7 **MR. BOIES:** Derivative work.

8 **THE COURT:** Derivative work. Derivative work.

9 Your argument is that if somebody starts with the
10 plain English descriptions in a clean room and then they do --
11 you know, they put on their own scientific thinking caps and
12 come up with their own program code, that no matter what they
13 come up with is going to be an infringement, a derivative work.

14 Doesn't that argument violate the principle that no
15 one has a monopoly or ownership of the idea expressed? They
16 have the -- they can -- they have the right to the expression
17 of their particularized expression of the idea, but if you
18 were -- say how do you do the rangeCheck or how do you do
19 the -- find the maximum of two numbers, and that that is the
20 idea and then you let a bunch of students go wild on it and
21 each one of them come up with a somewhat different solution to
22 that problem, isn't that the classic example of the -- you
23 don't have the right to their expression of that idea?

24 Now, possibly I'm misunderstanding your derived work
25 argument, but isn't that right? I mean, that just seems to me

CERTIFICATE OF REPORTERS

We, KATHERINE POWELL SULLIVAN and DEBRA L. PAS,
Official Reporters for the United States Court, Northern
District of California, hereby certify that the foregoing
proceedings in C 10-3561 WHA, **Oracle America, Inc., vs. Google,
Inc.**, were reported by us, certified shorthand reporters, and
were thereafter transcribed under our direction into
typewriting; that the foregoing is a full, complete and true
record of said proceedings at the time of filing.

_____/s/ Katherine Powell Sullivan

Katherine Powell Sullivan, CSR #5812, RPR, CRR
U.S. Court Reporter

_____/s/ Debra L. Pas

Debra L. Pas, CSR #11916, RMR CRR

Tuesday, April 23, 2012

*Katherine Powell Sullivan, CSR, CRR, RPR
Debra L. Pas, CSR, CRR, RMR
Official Reporters - US District Court - 415-794-6659*